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**November 27, 2002
DEPARTMENT OF ENERGY**

OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 10, 2002

Case Number: VSO-0555

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as the "individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth below, it is my decision that the individual's security clearance should not be restored.

I. Background

The individual is employed by a contractor at a DOE facility, and held an access authorization for six years. In February 2002, DOE conducted a Personnel Security Interview (PSI) with the individual. DOE Exhibit 6-1. The DOE suspended the individual's access authorization in February 2002 as a result of derogatory information that is set forth in the Notification Letter, and is summarized below.

The Notification Letter states that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8(f). The DOE Operations Office invokes Criterion F on the basis of information that the individual has deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions, a Questionnaire for National Security Positions (QNSP), a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceeding conducted pursuant to Sections 710.20 through 710.31. Letter from Director, Personnel Security Division, to Individual (April 30, 2002) (Notification Letter). In this regard, the Notification Letter states that: (1) in a 1996 PSI, the individual intentionally concealed the fact

that he was fired from a job in 1995, and also intentionally concealed the fact that he had used illegal drugs until 1995; (2) in a 2002 PSI, the individual finally admitted that he used marijuana until 1995, even though he had omitted this illegal activity from a QNSP that he submitted on July 24, 1996; and (3) the individual deliberately withheld information about his 1995 drug use in a 1996 PSI and 1996 QNSP because he was trying to conceal this information from DOE.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 11, 2002, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE counsel called a DOE personnel security specialist as its only witness. The individual, who was not represented by counsel, testified at the hearing and also elected to call his girlfriend and two colleagues as witnesses. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.” Documents submitted by the individual shall be cited as “Indiv. Ex.”

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer, I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual’s access authorization should not be restored as I conclude that such restoration would create an unacceptable security risk. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The facts in this case are uncontested. While working for a local company in 1995, the individual tested positive for marijuana on a random drug test and was fired as a result. Tr. at 23-25. The individual then secured a job with a DOE contractor, where he has been employed for six years in a job that required that he maintain a security clearance. Tr. at 172. As part of the hiring process for this job, the individual completed a QNSP in September 1996. Ex. 6 at 40-55. In response to a question asking if he had ever been fired or left a job following allegations of misconduct or unfavorable circumstances, the individual answered “No.” Ex. 6 at 49. In response to a question asking if he had used marijuana illegally in the last seven years, he answered “No.” Ex. 6 at 50. In December 1996, the individual was interviewed by DOE security in a PSI. Ex. 7. During the PSI, the individual recounted his past drug use, and told the DOE personnel security specialist that he had last used drugs in 1986. Tr. at 40-41. Further, the individual memorialized his commitment to abstain from drugs in the future by signing a drug certification. Tr. at 59-64.¹ DOE then granted a clearance to the individual. Ex. 2.

In 2001, DOE security received a request to upgrade the individual’s access, and initiated an investigation for the upgraded security level. Ex. 3. During the investigation, DOE learned that the individual had been fired from a job in 1995 after failing a random drug test. Ex. 4. This discovery triggered a new interview because the individual had not mentioned the termination in his QNSPs, and because he had assured DOE in 1996 that he had not used drugs since 1986. Ex. 4. During a PSI conducted in February 2002, the individual admitted that he had been fired from his job in 1995 after testing positive for marijuana, and he also admitted that he had last used drugs in October 1995, not in 1986 as he stated in his 1996 PSI. Ex.8 (2002 PSI) at 9. Later that year, the manager of the DOE Operations Office suspended the individual’s clearance. Notification Letter at 1. The individual requested a hearing on June 10, 2002. Letter from Individual to Director, OHA (June 10, 2002) (Request for Hearing).

B. Analysis

1. Security Concerns Associated with Derogatory Information

The personnel security specialist testified that DOE security “has a concern when an individual has deliberately misrepresented, falsified, or omitted significant information from either a questionnaire for national security position, a personnel security interview, or written or oral statements made in response to an official inquiry with regard to a security clearance.” Tr. at 27. According to the personnel security specialist, the individual also misrepresented information to the DOE when he did not fully disclose the extent of his illegal drug use. *Id.* Personnel security specialists have testified in previous cases that

¹/ According to the personnel security specialist, a drug certification is only offered to an individual when the personnel security specialist feels confident that the issues regarding that individual’s drug use have been resolved by information provided at the PSI. Tr. at 22.

falsification concerns DOE because the security program is based on trust, and it is difficult for the DOE to trust people who give false information. *Personnel Security Hearing*, Case No. VSO-0466, 28 DOE ¶ 82,829) (December 19, 2001). The DOE questions whether the person who lied can carry out the security program policies and procedures if they are not honest about information regarding their personal behavior. *Id.* In addition, the individual who falsifies, misrepresents, or omits information could be subject to duress, pressure or coercion because of their dishonest act. *Id.*; see also *Personnel Security Hearing*, Case No. VSO-0499, 28 DOE ¶ 82,850 (March 15, 2002).

2. Mitigation

Our cases have previously set out several factors for consideration in mitigating a charge of falsification. The factors for consideration are: (1) whether the individual came forward voluntarily to renounce his falsifications; (2) the length of time the falsehood was maintained; (3) whether a pattern of falsification is evident; and (4) the amount of time that has transpired since the individual's admission of the truth. See *Personnel Security Hearing*, Case No. VSO-0466, 28 DOE ¶ 82,829 (December 19, 2001) citing *Personnel Security Hearing*, Case No. VSO-0319, 27 DOE ¶ 82,851 (2000), *affirmed* (OSA 2000). After examining this case in light of those factors and the precedent set by our earlier cases, I find that I cannot recommend that the individual's clearance be restored.

It is true that the individual admitted, in February 2002, that he provided false information to the DOE in his 1996 PSI when he stated that he had not used drugs in 10 years and that he had never left a job under unfavorable circumstances. In fact, in his request for a hearing, he wrote that the intentional omission of both his termination in October 1995 due to a positive drug test and his marijuana use from 1986 until 1995 was a "foolish and immature act." Request for Hearing at 1. As additional mitigation, he offers testimony that while filling out an updated QNSP in 2001, he simply transferred information from the 1996 electronic copy (which contained misrepresentations and omissions) to the new version. Tr. at 28-29. The individual contends that he forgot about the 1995 firing, and that if he had "reviewed [his] questionnaire more thoroughly and realized [his] prior omissions, [he] would have come forward immediately." *Id.* at 2. Finally, the individual presented three credible witnesses who testified to his honesty and reliability in his personal life and in the workplace. Tr. at 12-13, 35-37, 45-46, 48; Indiv. Ex. 1-2.

Notwithstanding the information above, I find that the individual has not successfully mitigated the charge of falsification. First, the individual did not come forward voluntarily with a correction to the misrepresentations in his 1996 PSI, his 1996 QNSP, or his 2001 QNSP. He did not admit the falsification until 2002, when a personnel security specialist asked him about the circumstances under which he left his job at the end of 1995. Tr. at 48. Compare *Personnel Security Hearing*, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), *affirmed* (OSA Feb. 22, 1996) (voluntary disclosure by the individual), with *Personnel Security Hearing*, Case No. VSO-0327, 27 DOE ¶ 82,844 (April 20, 2000) (falsification discovered by DOE security). The personnel security specialist testified at the hearing that the *timing* of an individual's admission of a falsehood determines whether that admission can mitigate the falsification charge. Tr. at 30. Second, the individual maintained the falsehood for almost six years, from September

1996 until February 2002. During that time, there were many opportunities for the individual to correct his falsifications. Third, the individual provided false information more than once-- he twice submitted a QNSP to DOE that contained falsifications and omissions. The individual did not attempt to correct his errors on the second questionnaire, but merely transferred information from the old to the new.

Finally, only seven months had elapsed from the date when the individual finally admitted the truth to the date of the hearing. Our previous cases have stated that a subsequent pattern of responsible behavior is key to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing*, Case No. VSO-0499, 28 DOE ¶ 82,850 (March 15, 2002). In most cases, a substantial period of time has passed since the falsification, allowing an observation of the individual's behavior in order to determine reformation. *See Personnel Security Hearing*, Case No. VSO-0448, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four year period of deception); *Personnel Security Hearing*, Case No. VSO-0327, 27 DOE ¶ 82,844 (April 20, 2000), (less than one year of truthfulness insufficient to overcome long history of misstating professional credentials); *Personnel Security Hearing*, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation). Given the facts of this case, I cannot find that seven months is a sufficient period of time to determine whether the individual has mitigated the security concerns associated with a six year period of deception.

In order to determine the individual's eligibility for access authorization, I am guided by the factors in 10 C.F.R. § 710.7 (c). *See* Section II, *supra*. The individual admitted that his falsification was motivated by a desire to retain his job. Tr. at 48. The individual twice omitted significant information from his QNSP, most recently one year prior to the hearing. He did not admit his omissions and falsifications until seven months prior to the hearing, and then only after DOE discovered the discrepancies and called him in for an interview. By hiding the truth from DOE for six years, the individual demonstrated a high vulnerability to pressure, coercion, exploitation or duress in order to keep his job. *See* 10 C.F.R. § 710.7 (c). ²

III. Conclusion

As explained above, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (f) in suspending the individual's access authorization. The individual has not presented adequate mitigating factors to alleviate the legitimate security concerns of the DOE Operations Office. In view of this criterion and the record before me, I find that restoring the individual's access authorization would create an unacceptable security risk. Accordingly, I find that the individual's access authorization should not be restored.

^{2/} I also find that the charge cannot be mitigated by immaturity. Even though the individual described his actions as "foolish and immature," he was a mature adult in his mid-30s when he provided false information on his first QNSP. *See* Request for Hearing at 1.

The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer

Office of Hearings and Appeals

Date: November 27, 2002